IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 41 OF 2003.

State through Public
Prosecutor, Panaji. ... Appellant.

Versus

Pradeep Bhagat,
s/o Datta Bhagat,
r/o Amona, Near Mahalaxmi
Temple, Bicholim. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Applicant/State.

Mr. Mahesh Amonkar, Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 13th November 2003.

ORAL JUDGMENT.

The State, being aggrieved by the acquittal of the respondent for offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, passed by the Judicial Magistrate, First Class, Ponda, by Judgment, dated 7th February 2003, has filed the present appeal.

2. The facts in brief, as are necessary for the decision of the appeal, are set out hereunder:-

On 1st June 2002, at about 2.00 p.m., P.W.5 Head Constable Chandrakant Gawas, received information that there was an accident near Hotel Amigos between a motorcycle and a scooter. He, accordingly, registered Motor Accident No. 129/02 and went to the scene of the accident. In the presence of P.W.1 Pankaj Usgaonkar,

the scene of offence panchanama, at Exhibit P.W.1/A Colly was drawn. The vehicles involved in the accident were brought to the Police Station and the same were inspected by the Assistant Inspector of Motor Vehicle. The Accident Report Form of the said two vehicles are at Exhibit P.W.5/A Colly. After completion of the investigation, a charge-sheet against the present appellant came to be filed.

3. The learned trial Court, vide Exhibit 6, explained the particulars of the offences to the accused, who pleaded not guilty and claimed to be tried.

4. The prosecution has examined P.W.2 Sandip Dessai, who was riding the scooter, which met with an accident. According to him, on 1st June 2002, at about 1.30 p.m., he was proceeding, on his scooter, from Khandepar to Ponda and when he reached near the junction near the Amigos Hotel, at Curti, he saw a motorcycle coming from the opposite direction. The motorcycle was being driven by the accused with a girl sitting as pillion rider. According to him, the accused was talking to the said girl and was not concentrating on riding the motorcycle. The motorcycle came towards his side of the road and dashed on the left side of his scooter. As a result of the dash, P.W.2 Sandip and his pillion rider fell down and received injuries. According to him, the

girl, who was the pillion rider on the motorcycle also suffered head injury and, after the accident, the accused and the girl boarded a bus to Ponda. In the cross-examination he has denied the suggestion that the motorcycle, after skidding, collided with his scooter.

5. P.W.4 Manoj Bali was the pillion rider on the scooter driven by P.W.2 Sandip. According to him also, the motorcycle coming from the opposite direction was being driven by the accused. The accused was busy talking to a girl sitting as pillion rider and was not attentive to the traffic on the road. According to him, the motorcycle came and gave a dash to the scooter, due to which he suffered a fracture on the right leg. In the cross-examination he has also denied the suggestion that the motorcycle skidded on the road and, thereafter, dashed against the scooter.

6. The prosecution has examined P.W.3 Lalita Gaonkar, who was the pillion rider on the motorcycle driven by the accused. According to her, when they reached Amigos Hotel, both she and the accused fell down from the bike and the motorcycle dashed against the scooter after skidding. This witness was not cross-examined on behalf of the prosecution.

7. The respondent/accused has also taken a

similar defence, which is evident from the answer given to question no. 17 in his Statement under Section 313 of the Code of Criminal Procedure. The learned trial Court in the impugned Judgment has acquitted the respondent/accused on the ground that the defence of the accused is probabilised by virtue of the evidence of P.W.3 Lalita that the accident occurred as a result of the motorcycle skidding and, thereafter, dashing against the scooter.

8. With the assistance of the learned counsel for the parties, I have perused the impugned Judgment and the depositions of the witnesses examined by the prosecution. The view taken by the learned trial Court is a possible view on the basis of the evidence on record and, therefore, according to me, there is no perversity in the reasoning of the learned trial Court to warrant any interference in appeal.

9. In the result, the appeal is sans merit and is dismissed.

(P.V. HARDAS)
JUDGE.

ed's.